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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

BUBBLES, INC.,	)	Case 1:13-cv-00260
	)	
Plaintiff,	)	
	)	
v.	)	Alexandria, Virginia
	)	February 21, 2014
SIBU, LLC,	)	12:14 p.m.
	)	
Defendant.	)	
	)	Pages 1 - 25

TRANSCRIPT OF PLAINTIFF'S MOTION TO  
ENFORCE JUDGMENT/SETTLEMENT AGREEMENT  
BEFORE THE HONORABLE ANTHONY J. TRENGA  
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 THE CLERK: Civil Action 1:13-cv-260,  
2 *Bubbles, Inc. v. SIBU, LLC.*

3 Will counsel please identify themselves for  
4 the record.

5 MR. FRIEDEN: Good afternoon, Your Honor.  
6 John Frieden with Odin, Feldman & Pittleman. I'm here  
7 with my colleague Leigh Winstead and with Lauren  
8 Mooney, who is the associate general counsel for the  
9 Ratner Companies.

10 THE COURT: All right.

11 MR. MILLER: Your Honor, I am Blake Miller  
12 from Miller Guymon. With me is Bruce McMullin from  
13 SIBU, John Schifffrin, as well as Nicholas Moraites.

14 THE COURT: All right. We're here on a  
15 motion to enforce a settlement. Let me hear from  
16 Mr. Schifffrin.

17 Mr. Schifffrin, would you come to the podium.

18 MR. SCHIFFFRIN: Yes, Your Honor. Good  
19 morning.

20 THE COURT: Good morning.

21 Tell me what your position is as far as  
22 whether you had authority to agree to the -- first of  
23 all, tell the Court that the case had been settled and,  
24 secondly, to tell the other side that the matter had  
25 been settled on the basis of the terms that had been

1 provided to you.

2 MR. SCHIFFRIN: The terms that were provided  
3 on the 8th?

4 THE COURT: On the 8th, yes.

5 MR. SCHIFFRIN: My understanding of what was  
6 provided on the 8th was a consent motion and then was  
7 told soon after that the Court would not actually  
8 accept a consent motion. I said that the terms were  
9 generally fine. I maintain that that is the case.

10 THE COURT: On January 8 at 1:10, there was a  
11 note from Mr. Frieden saying that once you guys confirm  
12 that the terms I just sent over are the acceptable  
13 settlement terms, I think we should be good.

14 Then an hour later you said -- actually, a  
15 half an hour later you said, I can confirm that the  
16 terms are acceptable.

17 MR. SCHIFFRIN: Right.

18 THE COURT: So were you authorized to say  
19 that?

20 MR. SCHIFFRIN: Yes. Prior to that time, we  
21 had discussed that there would still be some wording  
22 that needed to be worked out.

23 THE COURT: So the only issue then is not  
24 whether there was a settlement, but what the terms of  
25 the settlement were --

1 MR. SCHIFFRIN: Exactly.

2 THE COURT: -- and what you found acceptable  
3 and what you were accepting were the terms set forth in  
4 what was sent over to you at 1:10?

5 MR. SCHIFFRIN: Right. But if I may --

6 THE COURT: Is that correct?

7 MR. SCHIFFRIN: If I may, Your Honor.

8 THE COURT: Well, answer my question. What  
9 you found acceptable and what you had authority to  
10 accept were the terms that were sent over by  
11 Mr. Frieden at 1:10; is that accurate?

12 MR. SCHIFFRIN: Right. Generally speaking,  
13 yes.

14 THE COURT: Well, you say generally speaking.

15 MR. SCHIFFRIN: Well, the general terms that  
16 we had agreed on, yes, but we also had three separate  
17 terms and conditions that were being bounced back and  
18 forth. I indicated to Mr. Frieden that we would  
19 also --

20 THE COURT: Hold on a minute. I'm not sure I  
21 have a copy of precisely what was sent over at 1:10.  
22 Do you have that?

23 MR. SCHIFFRIN: Mr. Frieden may end up having  
24 that.

25 THE COURT: All right. I'd like to see that

1 before we proceed.

2 MR. FRIEDEN: Your Honor, does the Court wish  
3 to see the terms that are in the consent --

4 THE COURT: What I want to see is what you  
5 said you had just sent over in your January 8 e-mail at  
6 1:10. You say, I think we should be good once you guys  
7 confirm that the terms I just sent over are the  
8 settlement terms.

9 MR. FRIEDEN: Yes, Your Honor. It was  
10 actually sent at 12:46 p.m. I have it here. It's  
11 Exhibit A to my declaration.

12 THE COURT: Because that's what Mr. Schiffrin  
13 has confirmed he accepted and he had authority to  
14 accept.

15 Have you shown a copy of this to  
16 Mr. Schiffrin?

17 MR. SCHIFFRIN: I've seen it, Your Honor.

18 THE COURT: All right. Just for the record,  
19 what I've been handed is Exhibit A.

20 This is Exhibit A to what, Mr. Frieden?

21 MR. FRIEDEN: Your Honor, it's Exhibit A to  
22 the declaration which was filed along with the brief in  
23 support of the motion.

24 THE COURT: Your declaration?

25 MR. FRIEDEN: Yes, Your Honor.

1 THE COURT: All right. It consists of a  
2 January 8 e-mail at 12:46, and attached to that is  
3 what's titled Consent Motion To Remove Or Continue  
4 Trial Date So That The Parties May Reduce Their  
5 Settlement Agreement To Writing.

6 All right. And just so I'm clear,  
7 Mr. Schiffrin, we're in agreement that that's what you  
8 received on January 8 and the terms in that is what you  
9 confirmed you were accepting by way of your January 8  
10 e-mail at 1:48. Is that correct?

11 MR. SCHIFFRIN: Yeah, I did receive those.

12 THE COURT: All right. Now, why don't we  
13 have an enforceable settlement?

14 MR. SCHIFFRIN: Well, the reason why we don't  
15 have an enforceable settlement is I didn't actually see  
16 the final terms of the agreement until after I appeared  
17 before the Court.

18 THE COURT: When you say the final terms of  
19 the agreement --

20 MR. SCHIFFRIN: The actual terms of the  
21 agreement that would have to be sent to the client.

22 THE COURT: Hold on a minute. You're  
23 confusing me.

24 MR. SCHIFFRIN: Okay.

25 THE COURT: What are you referring to other

1 than the terms that are in this consent motion?

2 MR. SCHIFFRIN: I believe -- and I'd have to  
3 look at it again -- that the terms -- well, I can't  
4 speak to whether the terms in the consent motion are  
5 identical to what we have in the final agreement. I  
6 know that I had asked for --

7 THE COURT: Forget about the final agreement.

8 MR. SCHIFFRIN: Well, I think the final  
9 agreement is --

10 THE COURT: Hold on. Forget about the final  
11 agreement. But as far as you're concerned, the  
12 settlement that you agreed to on behalf of your client  
13 is set forth in the consent motion that you received,  
14 correct?

15 MR. SCHIFFRIN: To the best of my knowledge,  
16 yes.

17 THE COURT: All right. So to the extent  
18 there is a dispute about whether your client or the  
19 other side has performed under the settlement  
20 agreement --

21 MR. SCHIFFRIN: Right.

22 THE COURT: -- it's going to be based on the  
23 terms set forth in the consent motion --

24 MR. SCHIFFRIN: And I would --

25 THE COURT: Correct? You agree with that?



1 MR. SCHIFFRIN: Yeah. And I would maintain  
2 that there are probably some ultimate differences on  
3 what my client perceived the terms to be and what we  
4 relayed. There are some issues regarding some  
5 definitions that needed to be hammered out,  
6 particularly beauty shop, beauty salon. There are also  
7 some issues that we have to determine as to what the  
8 actual mark is.

9 At this point, as I stand here before you  
10 today, we have two very minor issues that are left and  
11 have been left. We've attempted to work this out.  
12 We've continued to do so. At this point, we are here.  
13 We have acted in good faith essentially by providing  
14 mockups even though we did not have to do that.

15 THE COURT REPORTER: I'm sorry?

16 MR. SCHIFFRIN: I'm sorry. Mockups, drafts,  
17 proofs.

18 -- even though we did not have to do that and  
19 then that was subsequently incorporated into the terms  
20 that we agreed on on January 8. However, we didn't  
21 hear back with regard to finalizing the agreement until  
22 essentially our client would have been in breach.

23 So I know there are some back-and-forth with  
24 dates, and I know there's a lot of semantics with  
25 regard to what we've agreed to. Essentially, what

1 we've agreed to are the material terms of the  
2 agreement, and I don't think there's any question from  
3 both sides that that's the case.

4 THE COURT: Well, what you agreed to was a  
5 settlement based on the terms in the consent motion.

6 MR. SCHIFFRIN: Right, but we were also --

7 THE COURT: To the extent there's a dispute,  
8 this court or some other court is going to have to  
9 decide whether one party is breaching or in compliance  
10 with those terms.

11 MR. SCHIFFRIN: Right. We were also advised  
12 that a consent motion would not be valid in this court.  
13 As I told Mr. Frieden, Well, I think we may still have  
14 some writing to do. When I represented --

15 THE COURT: Wait a minute. Wait a minute.

16 MR. SCHIFFRIN: Your Honor.

17 THE COURT: Say that again. You thought that  
18 a consent motion would not be valid?

19 MR. SCHIFFRIN: That a consent motion -- and  
20 I believe it should be in some of the correspondence  
21 that we have. I was advised by -- well, Mr. Frieden  
22 told Mr. Zenger, also who has been involved in this  
23 case, that to resolve this matter, we do not need to  
24 file any sort of consent motion. So at that point, it  
25 appeared that it was off the table.

1 THE COURT: All right. It was clear to you,  
2 wasn't it --

3 MR. SCHIFFRIN: The basis --

4 THE COURT: Hold on a minute.

5 -- and I think it's reflected in one of the  
6 e-mails that you were told that although you didn't  
7 have to have your final enforceable agreement  
8 memorialized in a final writing --

9 MR. SCHIFFRIN: Right.

10 THE COURT: -- the case was not going to be  
11 continued and the case was going to be tried unless the  
12 parties --

13 MR. SCHIFFRIN: Right.

14 THE COURT: -- would tell the Court that the  
15 case had, in fact, been settled by way of an  
16 enforceable settlement.

17 MR. SCHIFFRIN: Right.

18 THE COURT: Okay.

19 MR. SCHIFFRIN: But my understanding was  
20 that -- that we had seen several terms --

21 THE COURT: And the enforceable settlement  
22 that you thought you had entered into on the basis of  
23 which you represented to the Court that the case had  
24 been settled were the terms set forth in the consent  
25 motion?

1 MR. SCHIFFRIN: I believe what I just said  
2 was that the case had been settled. I don't want to  
3 get into a back-and-forth on that. I had not seen the  
4 finalized agreement until afterwards. I would have  
5 liked to have seen it.

6 THE COURT: I understand that, but you  
7 understood as of the time that you represented to the  
8 Court in response to its question that the parties had  
9 entered into an enforceable settlement as of that  
10 moment?

11 MR. SCHIFFRIN: Right.

12 THE COURT: Not contingent on anything else  
13 based on the terms and conditions set forth in -- that  
14 had been passed to the parties and had been confirmed  
15 in what was the consent motion -- draft consent motion  
16 that had been forwarded to you?

17 MR. SCHIFFRIN: Right.

18 THE COURT: All right.

19 MR. SCHIFFRIN: My mistake, Your Honor, was  
20 instead of -- when Mr. Frieden told me that morning  
21 that he had not -- that he had sent me the agreement, I  
22 said, That's fine. My mistake that morning was saying  
23 this case is settled and not adding the comma, until I  
24 see the final agreement.

25 THE COURT: Well, if you had said that, we

1 would have tried the case.

2 MR. SCHIFFRIN: Fair enough.

3 THE COURT: All right.

4 MR. SCHIFFRIN: I still believe, Your Honor,  
5 that the parties are extremely close. There's only a  
6 couple of provisions that remain. We have actually  
7 submitted a signed agreement, which we did on the  
8 deadline. The plaintiff has never signed or indicated  
9 that they've accepted anything at this point.

10 So we are here essentially dealing with a  
11 couple of issues that are still in play. Instead of  
12 having negotiations to clean this up, all we've  
13 received essentially are threats.

14 THE COURT: All right. Mr. Frieden, do you  
15 want to add to anything?

16 MR. FRIEDEN: Very briefly, Your Honor. I  
17 think the Court has it correct. The terms of  
18 settlement are those set forth in the consent motion  
19 which were transmitted to opposing counsel on  
20 January 8. There was no need for my client to continue  
21 to negotiate a settlement which was already reached;  
22 although, they did in good faith in an attempt to avoid  
23 bringing this before the Court.

24 We would note, Your Honor, that  
25 Mr. Schiffrin, though he indicates today that he had

1 authority to make the statements and to enter into an  
2 enforceable settlement agreement, in his declaration  
3 upon which the opposition was based, he asserted in  
4 that sworn statement that he did not have such an  
5 authority and never did.

6 As a result --

7 THE COURT: Well, he has put on the record  
8 now -- and I don't hear anyone sitting at the table  
9 with him jumping up and saying what he said is  
10 inaccurate in any way. So he's confirmed at the time  
11 he accepted the terms set forth in the consent  
12 agreement, he did that with authority.

13 MR. FRIEDEN: Understood, Your Honor. I  
14 suggest only that it goes to the issue of whether it's  
15 appropriate for my client to bear the burden of its  
16 attorney's fees.

17 THE COURT: Well, that's a separate issue.

18 MR. FRIEDEN: Your Honor, on the basis of all  
19 of this -- and if we're going to defer and talk about  
20 the attorneys' issues in a minute, I would just ask the  
21 Court to find that the terms of the settlement were  
22 entered into on January 8 and that the terms are those  
23 set forth in the draft consent motion. I would ask the  
24 Court to enter an order requiring the defendant to  
25 comply with the terms of that settlement, and then we

1 can go from there.

2 MR. MILLER: Your Honor, may I be heard?

3 THE COURT: Yes. Identify yourself again for  
4 the record, please.

5 MR. MILLER: Blake Miller. I also represent  
6 SIBU in this matter. I'm out of Utah, Your Honor.

7 THE COURT: All right.

8 MR. MILLER: It's uncontested that this draft  
9 motion or consent motion or whatever the applicable  
10 term is was never sent to the client. It was never  
11 sent to SIBU.

12 THE COURT: Had you seen it?

13 MR. MILLER: I had not until after this  
14 dispute arose. There is an attorney in my office by  
15 the name of Joel Zenger who had seen it. There was a  
16 divisional responsibility here, Your Honor. In Utah,  
17 we were preparing this case for trial, and we're ready  
18 to try it. There were settlement discussions occurring  
19 in Virginia. We were not involved in that respect. So  
20 I can't give you personal knowledge of that. However,  
21 I can tell you that that draft motion, the exact terms  
22 of which were never communicated to SIBU until after  
23 this mess developed.

24 When we looked at the language, it created  
25 two problems.

1 THE COURT: Well, language of what?

2 MR. MILLER: Of the settlement agreement  
3 that --

4 THE COURT: Forget about the settlement  
5 agreement. We're talking about the terms in the  
6 consent motion, which as I understand it simply reflect  
7 terms that had already previously passed between the  
8 parties.

9 MR. MILLER: I don't believe it quite that  
10 way. There was a little bit different language used,  
11 Your Honor, in this motion that created an issue.  
12 Well, actually, one issue wasn't even addressed.  
13 That's the definition of the stores we were to stay out  
14 of, what we call the beauty shops or beauty salons.  
15 That wasn't even addressed in the consent motion at  
16 all.

17 THE COURT: Right. So that's going to get  
18 down to whether what stores the defendant decides to  
19 market in constitute beauty salons or beauty shops. I  
20 mean, that's a plain old contract interpretation issue.

21 MR. MILLER: That's fine. We would prefer a  
22 definition that would avoid conflict.

23 THE COURT: I agree. It seems to me that  
24 these issues are not that significant. The fact of the  
25 matter is the only issue before the Court is whether



1 the parties have entered into a binding settlement --  
2 based on what I've heard, it's clear to the Court that  
3 it had -- and what the terms are. It's also clear to  
4 the Court based on what I've heard so far that it's the  
5 terms in the consent motion.

6 Now, that the parties may have subsequently  
7 disagreed on further details or further understandings  
8 about what some of those terms mean doesn't change the  
9 fact that the parties had entered into an enforceable  
10 settlement based on the terms in that draft consent  
11 motion, which I think there may have been a tweak here  
12 and there. It's certainly, based on the e-mails that  
13 have been provided, just substantially reflected terms  
14 that had been passing back and forth for some period of  
15 time before January 8.

16 MR. MILLER: Well, I do think there is an  
17 issue, and I do think it's important.

18 THE COURT: What is the issue then?

19 MR. MILLER: How paragraph 2.1 relates to  
20 multi-word marks. It doesn't define SIBU marks. What  
21 happens is when you -- look, the agreement that what  
22 SIBU, the client, thought it was authorizing -- and it  
23 didn't authorize this particular language. The concept  
24 was we're going to apply Sea Buckthorn to the mark and  
25 it was going to be -- I'll use the word "tagline"

1 attached to it. These marks are multi-words. You have  
2 SIBU Beauty. There's also SIBU 7, SIBU Essentials.

3 THE COURT: Right.

4 MR. MILLER: If you use the terminology  
5 strictly -- and by the way, at the time I first read  
6 it, I didn't even interpret it this way. This came  
7 from the plaintiffs -- then you have to put Sea  
8 Buckthorn in the middle of the mark. So now it becomes  
9 SIBU -- not SIBU Beauty, SIBU Sea Buckthorn Beauty.

10 The Sea Buckthorn Company, which is one of  
11 our marks, you have to drop the "the" because there can  
12 be no alphanumeric character between the SIBU and  
13 the --

14 THE COURT: I'm sorry?

15 MR. MILLER: Alphanumeric.

16 What we suggest and what we signed and sent  
17 over, Judge, is simply defining the SIBU mark as  
18 including the product name.

19 THE COURT: I understand. I think it's a  
20 perfectly reasonable position. Again, from the way I  
21 see this issue, that's beside the point. If that is an  
22 ultimate dispute, the question is whether that's in  
23 compliance or not in compliance with the terms of the  
24 settlement that the parties reached. It may be that  
25 within that context that proof at a trial, if it were

1 ever to happen, is that the parties never reached a  
2 meeting of the minds on that term or that there were  
3 other collateral agreements and understandings or the  
4 terms were ambiguous or all the other contract issues  
5 that come up in breach of contract cases.

6 None of that changes the fact that as of the  
7 time that the parties represented to the Court in order  
8 to avoid a trial that they had reached an enforceable  
9 settlement, they had agreed on certain terms that were  
10 set forth in a document. The only dispute we're  
11 talking about here is what those terms mean.

12 MR. MILLER: Well, I --

13 THE COURT: It doesn't mean there was not a  
14 contract of settlement. It just means there's a  
15 dispute over what the settlement requires of the  
16 parties.

17 MR. MILLER: And that dispute has already  
18 arisen. On January 18, plaintiff said, You're in  
19 default. So I mean, we're already there. I believe  
20 there is -- under Virginia law, as I understand it, the  
21 authority issue comes from the client. And if what  
22 we're saying is that SIBU itself authorized this  
23 particular language, I don't think that occurred.

24 THE COURT: That's what Mr. Schiffrin said.  
25 He was authorized on behalf of his client to accept

1 these terms.

2 MR. MILLER: That's not my understanding.

3 THE COURT: He had actual authority.

4 MR. MILLER: My understanding is that he was  
5 authorized in a general way, but not the specific  
6 terms. SIBU didn't even see the terms for them to give  
7 that consent. There is at no time actual authority  
8 granted. There is no apparent authority.

9 And I think the cases are very clear. I  
10 think the best pronouncement of Virginia law is  
11 Virginia Supreme Court, which since a 1926 decision of  
12 *Singer Sewing Machine*, has made it clear that the  
13 client itself has to make that manifestation of  
14 consent. An attorney can't do it. An attorney can't  
15 stand in court and say, I have that authority.

16 I understand the problems that creates.

17 THE COURT: All right. Mr. Schiffrin, come  
18 to the podium.

19 MR. SCHIFFRIN: Yes, sir, Your Honor.

20 THE COURT: Who authorized you to accept the  
21 terms on January 18?

22 MR. SCHIFFRIN: On January 8, I received an  
23 e-mail from the client which indicated --

24 THE COURT: Who is the client?

25 MR. SCHIFFRIN: SIBU, Mr. McMullin.

1 THE COURT: You received an e-mail from  
2 Mr. McMullin --

3 MR. SCHIFFRIN: Right.

4 THE COURT: -- authorizing you to accept --

5 MR. SCHIFFRIN: Not the consent motion terms,  
6 the terms that were -- well, I had a list of terms  
7 essentially that we had parsed through. I had sent it  
8 over, and the word back that I received was I had the  
9 green light.

10 THE COURT: How did --

11 MR. SCHIFFRIN: I can only interpret it to  
12 mean --

13 THE COURT: What difference, if any, was  
14 there between those terms that he authorized you to  
15 accept and the terms as set forth in this consent  
16 motion?

17 MR. SCHIFFRIN: Well, to my knowledge, the  
18 addition of January 17, that came fairly -- January 17  
19 was the date essentially that our client would be in  
20 breach for not providing a mockup. That seemed to  
21 be -- that was brand new information. We had had three  
22 discussions. That may have come in the third iteration  
23 of it. If I missed it, that obviously is on me.  
24 Essentially, that's saying to my client that they need  
25 to provide a mockup of their new label by January 17

1 even though they wouldn't have to actually provide the  
2 label until sometime in the year 2015.

3 THE COURT: All right. Anything else?

4 MR. SCHIFFRIN: Nothing else, Your Honor.

5 THE COURT: No difference between --

6 MR. SCHIFFRIN: Oh, I'm sorry.

7 THE COURT: -- the terms that Mr. McMullin --  
8 Is it Mr. --

9 MR. SCHIFFRIN: McMullin.

10 THE COURT: -- saw and authorized you to  
11 accept and what is in this consent motion?

12 MR. SCHIFFRIN: To my knowledge, very little.  
13 I think that 2.1 -- and you may be correct that it may  
14 be more of an interpretation than anything else. But  
15 part of what we've been trying to do essentially is to  
16 make sure the interpretation is clear.

17 THE COURT: You're talking about the final  
18 settlement agreement?

19 MR. SCHIFFRIN: Exactly.

20 THE COURT: I'm talking about the terms of  
21 the consent motion.

22 MR. SCHIFFRIN: No. I believe the consent  
23 motion -- I generally think it was acceptable. I don't  
24 think there was any issue with it. When I got the  
25 green light, so to speak, I think that was essentially

1 meaning that the negotiations that Mr. Frieden and I  
2 have had bore fruit and we had had a meeting of the  
3 minds.

4 THE COURT: All right.

5 MR. SCHIFFRIN: All right. Thank you, Your  
6 Honor.

7 THE COURT: Mr. Miller, do you disagree with  
8 anything Mr. Schifffrin said?

9 MR. MILLER: Slightly.

10 THE COURT: Pardon me?

11 MR. MILLER: Slightly. I do not believe SIBU  
12 authorized giving up its multi-word marks.

13 THE COURT: Have you seen the e-mail that he  
14 referred to from Mr. McMullin?

15 MR. MILLER: I have seen a thread of e-mails.  
16 I don't have them in front of me, Your Honor, but I  
17 don't think it resolved that issue at all. I can tell  
18 you that was not SIBU's intent or authorization.

19 THE COURT: What wasn't?

20 MR. MILLER: To give up its multi-word marks,  
21 that SIBU has agreed to tie in Sea Buckthorn as a  
22 tagline.

23 THE COURT: Again, you're avoiding the issue.  
24 The only issue is whether -- not what was intended, but  
25 whether the words of this settlement had been agreed

1 to.

2 MR. MILLER: I can tell you what I've been  
3 told with respect to what SIBU authorized. I don't  
4 have that e-mail thread in front of me right now, Your  
5 Honor. I'm sorry.

6 THE COURT: All right.

7 MR. MILLER: But I'm told it was to --  
8 whatever this mark is, attached to it -- and it can't  
9 have no alphanumeric character between this mark and  
10 Sea Buckthorn, and there is a certain size and spacing  
11 requirement set forth. Yes, that was agreed to. But  
12 whether the mark is only the word "SIBU" or "SIBU  
13 others" was never authorized to be given up.

14 THE COURT: All right. Mr. Schiffrin,  
15 anything else you want to say -- I mean Mr. Frieden.

16 MR. FRIEDEN: Only to point out, Your Honor,  
17 I think the undisputed facts are clear that  
18 Mr. Schiffrin had actual authority. And in any event,  
19 under Virginia law, apparent authority is the rule.

20 I would point out, Your Honor, that the legal  
21 fees and costs expended to date on this issue by my  
22 client total \$24,885.01. I have an attorney's fees  
23 declaration to that effect with a breakdown of hours by  
24 attorney. On the rest, Your Honor, I would rely on the  
25 papers.



1 THE COURT: All right. I want you to submit  
2 that to the Court.

3 Also, Mr. Schifffrin, I want you to submit to  
4 the Court the e-mails that you received from  
5 Mr. McMullin.

6 MR. SCHIFFFRIN: Yes, sir.

7 THE COURT: I want those submitted by Monday.

8 All right. The Court is going to review  
9 those. It will decide how to proceed at that point,  
10 including whether the Court is going to need any kind  
11 of an evidentiary hearing on this.

12 All right. Thank you. Counsel is excused.

13 The Court will stand in recess.

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Time: 12:38 p.m.

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22 I certify that the foregoing is a true and  
23 accurate transcription of my stenographic notes.

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/s/  
Rhonda F. Montgomery, CCR, RPR